

JUDGE KATHLEEN CARDONE

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

FILED  
2011 MAY -6 PM 2:57  
JUDGE KATHLEEN CARDONE  
BY *[Signature]*

JAMES ELLIS,

Plaintiff,

v.

METROPOLITAN SECURITY  
SERVICES, INC., d/b/a WALDEN  
SECURITY,

Defendant.

Case No. **EP 11 CV 0183**

**NOTICE OF REMOVAL**

Metropolitan Security Services, Inc. d/b/a Walden Security, through counsel and in accordance with 28 U.S.C. § 1446(b), files this Notice of Removal of this action to the United States District Court for the Western District of Texas, El Paso Division. As grounds for removal, Walden Security respectfully shows the Court the following:

1. On or about March 31, 2011, Plaintiff filed his Original Petition in the District Court of El Paso County Texas, 34th Judicial District. Plaintiff's Original Petition, along with a Citation for Personal Service, were served by certified mail on Walden Security's registered agent on April 18, 2011.

2. Copies of the Citation and Original Petition, which constitute all process and pleadings served on Walden Security, are attached to this Notice of Removal as **Exhibit A** and are incorporated herein by reference. This Notice of Removal is filed within thirty (30) days after service.

3. This is an action for alleged discrimination and retaliatory discharge in violation of federal law. Plaintiff has specifically invoked the jurisdiction of this Court by basing his

action solely on federal law, specifically the Family and Medical Leave Act, 29 U.S.C. § 2601—2654.

4. Jurisdiction over this action is properly exercised by this Court under 28 U.S.C. § 1331, which confers original jurisdiction over such actions on the United States district courts. This action is thus removable to this Court under the provisions of 28 U.S.C. § 1441.

5. Walden Security is on this date giving written notice of the removal of this action to Plaintiff and is filing a copy of this Notice of Removal with the clerk of the state court, as is required by 28 U.S.C. § 1446(d).

**WHEREFORE**, Walden Security prays that this Court accept this Notice of Removal and that this action proceed in this Court as an action properly removed.

Respectfully submitted,

By: 

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P.O. Box 2800  
El Paso, TX 79999-2800  
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*Attorneys for Metropolitan Security Services, Inc.,  
d/b/a Walden Security*

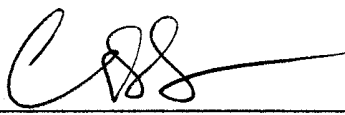
**CERTIFICATE OF SERVICE**

I hereby certify that I have served a true and correct copy of the foregoing **Notice of Removal** upon the following person(s) via ☐ hand delivery or ☒ United States first class mail with proper postage applied thereon to ensure prompt delivery:

Enrique Chavez, Jr.  
Chavez Law Firm  
2101 North Stanton Street  
El Paso, Texas 79902

This 6<sup>th</sup> day of May, 2011.

KEMP SMITH LLP.

BY:   
Clara B. Burns, State Bar No. 03443600

NORMA VELA  
DISTRICT CLERK  
IN THE COUNTY COURT AT LAW NUMBER \_\_\_\_\_  
EL PASO COUNTY TEXAS  
2011 MAR 31 PM 3 14  
IN THE DISTRICT COURT OF EL PASO COUNTY TEXAS  
JUDICIAL DISTRICT

JAMES ELLIS,  
Plaintiff,

V.

METROPOLITAN SECURITY SERVICES §  
INC., dba WALDEN SECURITY §  
Defendant. §

EL PASO COUNTY, TEXAS  
BY \_\_\_\_\_ §  
DEPUTY Cause No. \_\_\_\_\_

### PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE COURT:

Plaintiff JAMES ELLIS ("MR. ELLIS" AND "Plaintiff"), now complains of METROPOLITAN SECURITY SERVICES INC., dba WALDEN SECURITY, ("Defendant"), and respectfully shows the court and jury as follows:

#### **I. Discovery Level**

1. Discovery is intended to be conducted under Level 2 of Texas Rule of Civil Procedure 190.

#### **II. Parties**

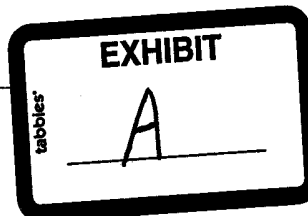
2. Plaintiff is an individual and an eligible employee within the meaning of the FMLA. 29 U.S.C. § 2611. Plaintiff has been subjected to unlawful employment practices committed within the State of Texas.

3. Defendant is an employer within the meaning of section 2611(4) of the FMLA in that Defendant employs and has employed 50 or more employees for each working day during each of twenty or more calendar work weeks during the applicable time period, and is engaged in commerce or in an industry or activity affecting commerce. Defendant, METROPOLITAN SECURITY SERVICES INC., dba WALDEN SECURITY is an entity upon whom service can be obtained by serving its agent for service of process, National Registered Agents Inc., 16055 SpaceCenter Suite 235, Houston, Texas 77062.

#### **III. Cause of Action:**

#### **FMLA VIOLATIONS**

4. Defendant failed to request any medical certification, for Plaintiff's medically qualifying leaves of absence due to the events relating to his condition.



5. Plaintiff was an eligible employee as defined by 29 U.S.C. §2611 of the FMLA because Plaintiff worked for Defendant for at least 12 months and for at least 1250 hours of service during the previous 12-month period before he first took and or requested FMLA leave.

6. Plaintiff was also an "individual" (as distinct from an "eligible employee") entitled to be free from discrimination and retaliation as set out in 29 U.S.C. §2615(a)(2),(b).

7. Defendant is a "person" under the FMLA.

8. Plaintiff would show that Defendant violated the FMLA with respect to him in the following and other respects:

- (a) by firing him on or about 05-08-2009, without providing him the leave entitlement and benefits guaranteed by the FMLA because of his own serious health condition;
- (b) by interfering with, restraining or denying plaintiff's exercise or his attempts to exercise his rights provided by the FMLA;
- (c) by discriminating and or otherwise retaliating against him in violation of the FMLA.

9. All conditions precedent to the filing of this action have occurred or have been fulfilled.

#### **IV. Jurisdiction**

10. This is a proceeding authorized by and instituted pursuant to the Family & Medical Leave Act of 1993 (FMLA). 29 U.S.C. §2601, *et seq.* It is brought to prevent Defendant from denying, restraining or otherwise interfering with the rights guaranteed Plaintiff by the FMLA, and to recover damages and other relief authorized by section 2617(a) of the FMLA. 29 U.S.C §2617(a).

11. Jurisdiction is proper by virtue of section 2617(a)(2) which provides for jurisdiction in a State Court for actions arising under the FMLA. 29 U.S.C. §2617(a)(2).

#### **V. Damages**

12. Plaintiff seeks statutory damages, back pay, front pay and or lost wages and benefits in the past and future, all actual monetary losses, liquidated damages, attorney's fees, expert witness fees, costs, interest and such other and further legal and equitable relief to which Plaintiff is entitled pursuant to the FMLA.

**VI. Jury Demand**

13. Plaintiff demands this case be decided by jury as allowed by Texas Rule of Civil Procedure 216.

**VII. Request for Disclosure**

14. Pursuant to Texas Rule of Civil Procedure 194, Defendant is requested to disclose the information and material described in Rule 194.2(a)-(k).

**VIII. Prayer**

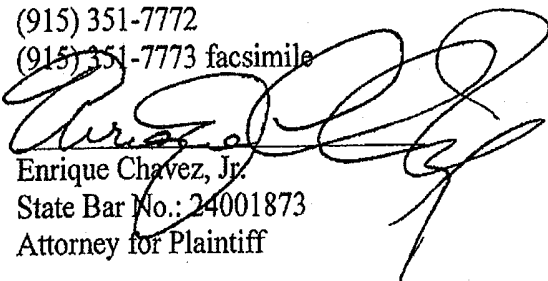
MR. ELLIS respectfully prays that he recover from Defendant METROPOLITAN SECURITY SERVICES INC., dba WALDEN SECURITY statutory damages under the FMLA, liquidated damages, attorney's fees, plus prejudgment interest, post-judgment interest and such other and further relief to which he may show himself to be justly entitled, in law and in equity. The amount sought herein is within the jurisdictional limits of the court.

SIGNED on this 31 day of March 2011.

Respectfully submitted,

CHAVEZ LAW FIRM  
2101 North Stanton Street  
El Paso, Texas 79902  
(915) 351-7772  
(915) 351-7773 facsimile

By:

  
Enrique Chavez, Jr.  
State Bar No.: 24001873  
Attorney for Plaintiff

867-CITATION FOR PERSONAL SERVICE-Either Court-by Certified Mail-Rev. 9-07

## THE STATE OF TEXAS

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

TO: **METROPOLITAN SECURITY SERVICES, INC., DBA WALDEN SECURITY** who may be served with process at 16055 Space Center Suite 235, Houston, Texas 77062.

Greetings:

You are hereby commanded to appear by filing a written answer to the Plaintiff's Original Petition at or before ten o'clock A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable **34th District Court**, El Paso County, Texas, at the Court House of said County in El Paso, Texas.

Said Plaintiff's Petition was filed in said court on 03/31/2011, by Attorney at Law CHAVEZ JR, ENRIQUE, 2101 N. STANTON STREET, EL PASO TX 79902, in this case numbered **2011-1238** on the docket of said court, and styled:

**ELLIS, JAMES vs. METROPOLITAN SECURITY SERVICES INC.**

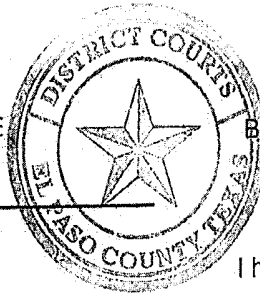
The nature of Plaintiff's demand is fully shown by a true and correct copy of the Plaintiff's Original Petition accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and seal of said Court at El Paso, Texas, this 4th day of April, 2011.

Attest: **NORMA L. FAVELA**, District Clerk, El Paso County, Texas.

CLERK OF THE COURT  
**NORMA L. FAVELA**, District Clerk  
Rm. 103 COUNTY COURTHOUSE  
500 E. SAN ANTONIO  
El Paso Texas, 79901



ATTACH  
RETURN RECEIPTS  
WITH

ADDRESSEE'S SIGNATURE

Rule 106 (a) (2) the citation shall be served by mailing to the defendant by certified mail  
Return receipt requested, a true copy of the citation \_\_\_\_\_.

Sec. 17.027 Rules of Civil Practice and Remedies Code if not prepared by Clerk of Court.

\*NAME OF PREPARER CM TITLE \_\_\_\_\_  
Complete Civil Process  
ADDRESS 801 N. El Paso St., Ste 1.1. #1  
El Paso TX 79938  
CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

By Stephanie C. Ramirez, Deputy

Stephanie C. Ramirez  
CERTIFICATE OF DELIVERY BY MAIL

I hereby certify that on the 5 day of

April, 2011 at 4:00 p.m.

mailed to DBA Walden Security  
metropolitan security services inc

Defendant(s) by registered mail or certified mail with delivery restricted to addressee only, return receipt requested, a true copy of this citation with a copy of the Plaintiff's Original Petition attached thereto.

Carolina Meza  
Private Process Server  
TX LIC# SCH-4085

TITLE \_\_\_\_\_



867-CITATION FOR PERSONAL SERVICE-Either Court-by Certified Mail-Rev. 9-07

### RETURN OF SERVICE

Delivery was completed on \_\_\_\_\_, delivered to \_\_\_\_\_  
\_\_\_\_\_ as evidenced by Domestic  
Return Receipt PS Form 3811 attached hereto.

The described documents were not delivered to the named recipient. The certified mail envelope was  
returned undelivered marked \_\_\_\_\_.

This forwarding address was provided: \_\_\_\_\_.

Certified Mail Article Number:

Attest: NORMA L. FAVELA, District Clerk  
El Paso County, Texas

By: \_\_\_\_\_  
Deputy District Clerk

OR

\_\_\_\_\_  
Name of Authorized Person

By: \_\_\_\_\_

### VERIFICATION BY AUTHORIZED PERSON

State of Texas  
County of El Paso

Before me, a notary public, on this day personally appeared \_\_\_\_\_, known to me to  
be the person whose name is subscribed to the foregoing Return of Service, and being by me first duly  
sworn, declared, "I am a disinterested party qualified to make an oath of that fact and the statements  
contained in the Return of Service are true and correct."

Subscribed and sworn to be on this \_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_